

281—41.226(256B,34CFR300) Early intervening services.

41.226(1) General. An AEA or LEA may not use more than 15 percent of the amount the AEA or LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the AEA or LEA pursuant to rule 41.205(256B,34CFR300), if any, in combination with other amounts, which may include amounts other than education funds, to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12, with a particular emphasis on students in kindergarten through grade 3, who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

41.226(2) Activities. In implementing coordinated, early intervening services under this rule, an AEA or LEA may carry out activities that include:

a. Professional development, which may be provided by other entities, for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction and, where appropriate, instruction on the use of adaptive and instructional software; and

b. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

41.226(3) Construction. Nothing in this rule shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.

41.226(4) Reporting: in general. Each AEA or LEA that develops and maintains coordinated, early intervening services under this rule must annually report to the SEA on:

a. The number of children served under this rule who received early intervening services; and

b. The number of children served under this rule who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two-year period.

41.226(5) Reporting: disproportionality. If an LEA is required to reserve the maximum amount available under this rule for early intervening services because of a determination of significant disproportionality under rule 41.646(256B,34CFR300), that LEA must make additional reports on the use of funds under this rule and rule 41.646(256B,34CFR300), as required by the SEA.

41.226(6) Coordination with ESEA. Funds made available to carry out this rule may be used to carry out coordinated, early intervening services aligned with activities funded by and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this rule.